71-1332

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

NO. 71-

SAN ANTONIO INDEPENDENT SCHOOL DISTRICT, ET AL.,
Appellants

v.

DEMETRIO P. RODRIGUEZ, ET AL.,
Appellees

On Appeal from the United States District Court for the Western District of Texas

JURISDICTIONAL STATEMENT

CRAWFORD C. MARTIN
Attorney General of Texas
NOLA WHITE
First Assistant Attorney General
ALFRED WALKER
Executive Assistant Attorney General
SAMUEL D. MCDANIEL
Staff Legal Assistant
J. C. DAVIS
Assistant Attorney General
PAT BAILEY
Assistant Attorney General
P. O. Box 12548
Capitol Station
Austin, Texas 78711
CHARLES ALAN WRIGHT
2500 Red River Street
Austin, Texas 78705
Attorneys for Appellants

INDEX

AUTHORITIES

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

NO. 71-

SAN ANTONIO INDEPENDENT SCHOOL DISTRICT, ET AL.,

Appellants

v.

DEMETRIO P. RODRIGUEZ, ET AL.,

Appellees

On Appeal from the United States District Court for the Western District of Texas

---

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the United States District Court for the Western District of Texas entered on December 23, 1971, and from the clarification of that judgment entered on January 26, 1972, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

Opinion Below

The opinion of the District Court for the Western District of Texas is not yet reported. The opinion and judgment and the clarification of the original opinion and judgment are attached hereto as Appendix A.

JURISDICTION

This suit was brought under 28 U.S.C. §§ 1331 and 1343 for a declaratory judgment and an injunction against enforcement of Article VII, § 3, of the Texas Constitution and the sections of the Texas Education Code relating to the financing of education. A statutory three-judge court was convened pursuant to 28 U.S.C. § 2281. On December 23, 1971, that court entered its judgment granting an injunction as prayed for by the plaintiffs. A motion for clarification was filed by the defendants on December 28, 1971, and on January 26, 1972, a new judgment was entered on behalf of the three-judge court to make it clear that the judgment does not affect the validity or enforceability of outstanding school district bonds or of those that may be issued in the next two years. Notice of appeal was filed in the District Court on February 16, 1972. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. §§ 1253 and 2101(b).

Although the order of the court below was stayed for two years from the entry of the original judgment and the court retained jurisdiction to take further steps if necessary to implement its order in the event that the Texas legislature should fail to act within two years, it stated, in both the original and the clarified judgment, its understanding that "this constitutes no impediment with respect to the finality of this judgment for the purpose of appeal, and none is intended." The view of the District Court that this Court has jurisdiction to review the judgment on direct appeal despite the reservation of jurisdiction is supported by such cases as *Swann v. Adams,* 385 U.S. 440 (1967), and *Reynolds v. Sims,* 377 U.S. 533 (1964).

Question Presented

Whether Section 3 of Article VII of the Constitution of the State of Texas and the sections of the Texas Education Code relating to the financing of education violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

Constitutional and Statutory Provisions

Section 1 of the Fourteenth Amendment of the Constitution of the United States provides in relevant part: "No State shall * * * deny to any person within its jurisdiction the equal protection of the laws."

Section 3 of Article VII of the Constitution of the State of Texas provides as follows:

> Sec. 3. One-fourth of the revenue derived from the State occupation taxes and poll tax of one dollar on every inhabitant of the State, between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free schools; and in addition thereto, there shall be levied and collected an annual ad valorem State tax of such an amount not to exceed thirty-five cents on the one hundred ($100.00) dollars valuation, as with the available school fund arising from all other sources, will be sufficient to maintain and support the public schools of this State for a period of not less than six months in each year, and it shall be the duty of the State Board of Education to set aside a sufficient amount out the said tax to provide free text books for the use of children attending the public free schools of this State; provided, however, that should the limit of taxation herein named be insufficient the

deficit may be met by appropriation from the general funds of the State and the Legislature may also provide for the formation of school district by general laws; and all such school districts may embrace parts of two or more counties, and the Legislature shall be authorized to pass laws for the assessment and collection of taxes in all said districts and for the management and control of the public school or schools of such districts, whether such districts are composed of territory wholly within a county or in parts of two or more counties, and the Legislature may authorize an additional ad valorem tax to be levied and collected within all school districts heretofore formed or hereafter formed, for the further maintenance of public free schools, and for the erection and equipment of school buildings therein; provided that a majority of the qualified property taxpaying voters of the district voting at an election to be held for that purpose, shall vote such tax not to exceed in any one year one ($1.00) dollar on the one hundred dollars valuation of the property subject to taxation in such district, but the limitation upon the amount of school district tax herein authorized shall not apply to incorporated cities or towns constituting separate and independent school districts, nor to independent or common school districts created by general or special law.

It would serve no useful purpose to reproduce at this point the Texas statutory provisions involved. The statutes are numerous and lengthy. Both the plaintiffs in their complaint below and the three-judge court in its judgment were content to refer merely to "the sec-

tions of the Texas Education Code relating to the financing of education, including the Minimum Foundation School Program Act," and did not specify which statutory provisions they found objectionable.

Statement

This action was brought as a class action on behalf of Mexican-American school children and their parents who live in the Edgewood Independent School District in Bexar County, Texas, and on behalf of all other children throughout Texas who live in school districts with low property valuations. Numerous state and local officials and school districts were named as defendants. They claimed that the present system of financing public schools in Texas is discriminatory because it makes the quality of education received by students a function of the wealth of their parents and neighbors as measured by the tax rate and property values of the school district in which they reside. They further claimed that the system discriminates against school districts in which there is a high percentage of Mexican-Americans.

Although the details of the Texas system for financing public education are extremely complex, the general plan can be fairly readily described. In essence, it is a combination of ad valorem taxes levied by school districts with a state contribution that is intended to assure every child in the state of at least a minimum foundation education. The state contribution is calculated in a fashion that has a mildly equalizing effect.

The heart of the Texas system is the Minimum Foundation Program. *Texas Education Code*, §§ 16.01 *et seq.* Under that program more than a billion dol-

lars a year is provided to cover the costs of salaries of professional personnel, school maintenance, and transportation. Eighty percent of the amount to which a school district is entitled under the Minimum Foundation Program is paid by the state from general revenue. The balance of the cost of the minimum program comes from the school districts under the Local Fund assignment. *Texas Education Code,* §§ 16.71-16.73. An economic index is used so that each county's contribution to the Local Fund Assignment approximates that county's percentage of statewide taxpaying ability. *Texas Education Code,* §§ 16.74, 16.76. Within each county the portion of the Local Fund Assignment that each school district is expected to contribute is the percentage of the county's assignment that the value of the property in the school district is of the value of all of the property in the county. *Texas Education Code,* § 16.76. Thus, while the state contributes, on an overall basis, 80% of the cost of the Minimum Foundation Program, in some districts that lack the ability to raise substantial funds by local effort the state contribution is in excess of 98% of the cost of the Minimum Foundation Program, while in districts with greater ability to pay the state contribution is less than 80%.

Each district is then free to supplement the minimum program with additional funds raised by local ad valorem taxes. *Texas Education Code,* §§ 20.01 *et seq.* In combination, the Texas plan assures every child in the state of a certain minimum level of education on a nondiscriminatory basis but allows each local school district to provide educational benefits above the minimum to the extent that the district wants them and can afford them.

The court below ignored, quite properly, the claim of discrimination against Mexican-Americans. It accepted, however, the plaintiffs' claim that the Texas plan is unconstitutional because "wealthy" school districts can and do spend more per child for education than do "poor" school districts. It held that the Equal Protection Clause of the Fourteenth Amendment embodies a standard of "fiscal neutrality," which means that "the quality of public education may not be a function of wealth, other than the wealth of the state as a whole." The court enjoined enforcement of the Texas laws on the financing of education "insofar as they discriminate against plaintiffs and others on the basis of wealth other than the wealth of the State as a whole." It ordered defendants to reallocate the funds available for financial support of the school system, including local ad valorem taxes, in a fashion consistent with what it thought to be required by the Equal Protection Clause. It stayed its mandate for two years to give the defendants and the legislature an opportunity to take all steps reasonably feasible to make the school system comply with the applicable law as it had declared it and included language in the clarification of its judgment intended to make it clear that its order does not affect the validity of school bonds and similar financial obligations already issued or that may be issued within the two year period of the stay.

The Questions Are Substantial

1. The court below has read into the Equal Protection Clause a limitation on the freedom of states to govern themselves that would, if it is upheld, require striking down the systems of school financing used

in 49 of the 50 states. Although the state plans vary in their particulars, they do commonly depend on some combination of state funds and local ad valorem taxes. Only in Hawaii, so it is said, does the present financing plan satisfy the standard that the court below has found to be constitutionally required.

2. The decision below would adversely affect the quality of public education in the state. It is difficult to believe that many, if any states, already under heavy financial pressures, would be able to provide each child throughout the state an amount for education equal to that now spent per child in the districts of the state with the greatest resources. Equalizing amounts spent on education on a state-wide basis would almost certainly be done at a level that would not significantly increase the overall expenditure for education. The result would be some improvement—to the extent that the quality of education may be a function of the amount spent—in education in the worst schools at the expense of the best schools. Quality education would be sacrificed in the name of equality. See Kurland, *Equal Educational Opportunity: The Limits of Constitutional Jurisprudence Undefined,* 35 U.CHI.L.REV. 583, 590-591 (1968).

3. The decision below would be a crippling blow to education at a time when it is already under heavy pressure from those who resist desegregation. It is unlikely that those whose children now enjoy high quality education would sit happily by as the quality of that education is reduced. So long as *Pierce v. Society of Sisters,* 268 U.S. 510 (1925), remains authoritative, a ready alternative is at hand for those with comfortable means. The decision below would encourage flight

away from the public schools at a time when the public schools are the principal hope of achieving a society that is not divided by artificial barriers of race or class or wealth.

4. The decision below is not required by prior decisions of this Court. The principle of "fiscal neutrality" accepted as constitutionally required by the court below, as well as by other courts that have reached similar results, was stated as Proposition I in an engaging and provocative article, Coons, Clune, & Sugarman, *Educational Opportunity: A Workable Constitutional Test for State Financial Structures,* 57 CALIF.L.REV. 305, 311 (1969). Those authors were quite candid about the existing state of the law. They said, at 372:

> Concededly, Proposition I is not a logical extension of any existing doctrine, and the argument for it will be dictated more by purely policy considerations than by syllogisms.

Perhaps it would be sound public policy to provide for homogenized education, but one need not hold the naive view that policy considerations play no part in the growth of the law to believe that a policy judgment of that kind is appropriately made by a legislative body rather than a court.

5. The decision below is contrary to prior decisions of this Court. In *McInnis v. Ogilvie,* 394 U.S. 322 (1969), and in *Burruss v. Wilkerson,* 397 U.S. 44 (1970), this Court summarily affirmed decisions of district courts that had rejected challenges to the system of public school financing similar to the challenge made in the present case. In those cases the Court had the benefit of amicus briefs from distinguished lawyers

urging reversal. Professor Coons and his associates appeared as friends of the Court to suggest to the Court the arguments they were about to publish in their article that has been so influential. Despite all of this the Court chose to affirm. Affirmance of a three-judge district court by this Court cannot be lightly written off, as some have since suggested, as akin to a denial of certiorari. It is a decision on the merits. STERN & BRESSMAN, SUPREME COURT PRACTICE 197 (4th ed. 1969); WRIGHT, FEDERAL COURTS 495 (2d ed. 1970). In the light of those recent decisions from this Court, it would be appropriate, if the decision below stood alone, to move for summary reversal. Unfortunately the present decision does not stand alone. Other courts have yielded to the seductive charms of this newly-discovered doctrine. *E.g., Serrano v. Priest*, 5 Cal. 3d 584, 96 Cal.Rptr. 601, 487 P.2d 1241 (1971); *Van Dusartz v. Hatfield*, 334 F.Supp. 870 (D.Minn. 1971). Under those circumstances it seems appropriate that this Court hear oral argument in the matter and resolve the issue in a way that cannot be misunderstood by lower state and federal courts. If the Court should agree that argument ought to be heard in this case, Texas respectfully requests that the case be set for argument on an expedited basis early in the 1972 Term. The Texas legislature convenes in its biennial session in January, 1973, and an early decision from this Court, advising the legislature whether any change in the Texas system of public school financing is required, would be of advantage to the legislature in deciding how, if at all, it should respond to the order of the three-judge court.

CONCLUSION

For the foregoing reasons, it is submitted that this

Court should note probable jurisdiction of the present case and set it for argument early in the 1972 Term.

Respectfully submitted,

CRAWFORD C. MARTIN
Attorney General of Texas

NOLA WHITE
First Assistant Attorney General

ALFRED WALKER
Executive Assistant Attorney General

SAMUEL D. MCDANIEL
Staff Legal Assistant

J. C. DAVIS
Assistant Attorney General

PAT BAILEY
Assistant Attorney General

P. O. Box 12548
Capitol Station
Austin, Texas 78711

CHARLES ALAN WRIGHT
2500 Red River Street
Austin, Texas 78705

Attorneys for Appellants

CERTIFICATE OF SERVICE

I, Pat Bailey, one of the attorneys for the Appellants, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 13th day of April, 1972, I served three copies of the foregoing Jurisdictional Statement on the Appellees by depositing such copies in the United States Mail, postage prepaid, and addressed to the attorney of record for Appellees as follows: Mr. Arthur Gochman, 313 Travis Park West, 711 Navarro, San Antonio, Texas 78224, Mario Obledo, 145 9th Street, San Francisco, California 94103.

Pat Bailey

PAT BAILEY

APPENDIX A

OPINIONS AND JUDGMENTS BELOW

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CIVIL ACTION NO. 68-175-SA

DEMETRIO P. RODRIGUEZ, ET AL.,
v.
SAN ANTONIO INDEPENDENT SCHOOL DISTRICT, ET AL.,

Before GOLDBERG, Circuit Judge; SPEARS, Chief District Judge; and ROBERTS, District Judge.

PER CURIAM:

Pursuant to Rule 23, Federal Rules of Civil Procedure, plaintiffs bring this action on behalf of Mexican American school children and their parents who live in the Edgewood Independent School District, and on behalf of all other children throughout Texas who live in school districts with low property valuations. Jurisdiction of this matter is proper under 28 U.S.C. §§ 1331, 1343. This Court finds merit in plaintiffs' claim that the current method of state financing for public elementary and secondary education deprives their class of equal opportunity of the laws under the Fourteenth Amendment to the United States Constitution.[1]

---

[1] See Serrano v. Priest, 5 Cal. 3d 584, — P. 2d — (1971); and Van Dusartz v. Hatfield, — F. Supp. — (D. Minn. 1971). Serrano convincingly analyzes discussions regarding the suspect nature of classifications based on wealth, and Van

Edgewood and six other school districts lie wholly or partly within the city of San Antonio, Texas. Five additional districts are located within rural Bexar County. All of these districts and their counterparts throughout the State are dependent upon federal, state, and local sources of financing. Since the federal government contributes only about ten percent of the overall public school expenditures, most revenue is derived from local sources and from two state programs—the Available School Fund and the Minimum Foundation Program. In accordance with the Texas Constitution, the $296 million in the Available School Fund for the 1970-1971 school year was allocated on a per capita basis determined by the average daily attendance within a district for the prior school year.

Costing in excess of one billion dollars for the 1970-1971 school year, the Minimum Foundation Program provides grants for the costs of salaries, school maintenance and transportation. Eighty percent of the cost of this program is financed from general State revenue with the remainder apportioned to the school districts in "the Local Fund Assignment." TEX. EDUC. CODE ANN. arts. 16.71-16.73 (1969). Although generally measuring the variations in taxpaying ability, the Economic Index employed by the State to determine each district's share of "the Local Fund Assignment" (TEX. EDUC. CODE ANN. arts 16.74-16.78) has come under increasing criticism.*

Dusartz points out that in this type case "the variations in wealth are state created. This is not the simple instance in which the poor man is injured by his lack of funds. Here the poverty is that of a governmental unit that the state itself has defined and commissioned."

*See THE CHALLENGE AND THE CHANCE, RPT. OF THE GOVERNOR'S COMM. ON PUBLIC SCHOOL EDUC.

To provide their share of the Minimum Foundation Program, to satisfy bonded indebtedness for capital expenditures, and to finance all expenditures above the state minimum, local school districts are empowered within statutory or constitutional limits to levy and collect ad valorem property taxes. TEX. CONST. art. 7, §§ 3, 3a; TEX. EDUC. CODE ANN. art. 20.01, et seq. Since additional tax levies must be approved by a majority of the property-taxpaying voters within the individual districts, these statutory and constitutional provisions require as a practical matter that all tax revenues be expended solely within the district in which they are collected.

Within this ad valorem taxation system lies the defect which plaintiffs challenge. This system assumes that the value of property within the various districts will be sufficiently equal to sustain comparable expenditures from one district to another. It makes education a function of the local property tax base. The adverse effects of this erroneous assumption have been vividly demonstrated at trial through the testimony and exhibits adduced by plaintiffs. In this connection, a survey of 110 school districts* throughout Texas demonstrated that while the ten districts with a market value of taxable property per pupil above $100,000 enjoyed an equalized tax rate per $100 of only thirty-one cents, the poorest four districts, with less than $10,000 in property per pupil, were burdened with a rate of seventy cents. Nevertheless, the low rate of the

---

58-68 (1968). The accuracy of the Economic Index is the subject of separate litigation in Fort Worth Ind. School Dist. v. J. W. Edgar, (N.D. Tex., Fort Worth Div.).

*The total number of districts in the state is approximately 1200.

rich districts yielded $585 per pupil, while the high rate of the poor districts yielded only $60 per pupil. As might be expected, those districts most rich in property also have the highest median family income and the lowest percentage of minority pupils, while the poor property districts are poor in income and predominantly minority in composition.[3]

Data for 1967-1968 show that the seven San Antonio school districts follow the statewide pattern. Market value of property per student varied from a low of $5,429 in Edgewood, to a high of $45,095 in Alamo Heights. Accordingly, taxes as a percent of the property's market value were the highest in Edgewood and the lowest in Alamo Heights. Despite its high rate, Edgewood produced a meager twenty-one dollars per pupil from local ad valorem taxes, while the lower rate of Alamo Heights provided $307 per pupil.

Nor does State financial assistance serve to equalize these great disparities. Funds provided from the combined local-state system of financing in 1967-1968 ranged from $231 per pupil in Edgewood to $543 per pupil in Alamo Heights. There was expert testimony to the effect that the current system tends to subsidize the rich at the expense of the poor, rather than the other way around. Any mild equalizing effects that state aid may have do not benefit the poorest districts.

For poor school districts educational financing in Texas is, thus, a tax more, spend less system. The constitutional and statutory framework employed by

[3]Plaintiffs' Exhibit VIII shows 1960 median family income of $5,900 in the top ten districts and $3,325 in the bottom four. The rich districts had eight per cent minority pupils while the poor districts were seventy-nine percent minority.

the State in providing education draws distinction between groups of citizens depending upon the wealth of the district in which they live. Defendants urge this Court to find that there is a reasonable or rational relationship between these distinctions or classifications and a legitimate state purpose. This rational basis test is normally applied by the courts in reviewing state commercial or economic regulation. *See, e.g., McCowan v. Maryland,* 366 U.S. 420 (1961); *Williamson v. Lee Optical of Oklahoma,* 348 U.S. 483 (1955). More than mere rationality is required, however, to maintain a state classification which affects a "fundamental interest," or which is based upon wealth. Here both factors are involved.

These two characteristics of state classification, in the financing of public education, were recognized in *Hargrave v. McKinney,* 413 F. 2d 320, 324 (5th Cir. 1969), *on remand, Hargrave v. Kirk,* 313 F. Supp. 944 (M.D. Fla. 1970), vacated on other grounds sub nom., *Askew v. Hargrave,* 401 U.S. 476 (1971). Among the authorities relied upon to support the *Hargrave* conclusion "that lines drawn on wealth are suspect" is *Harper v. Virginia Bd. of Elections,* 383 U.S. 663, 668, (1965).[1] In striking down a poll tax requirement because of the possible effect upon indigent voting, the Supreme Court concluded that "[l]ines drawn on the basis of wealth or property, like those of race . . . are traditionally disfavored. . . . To introduce wealth or payment of a fee as a measure of a voter's qualifica-

[1] In addition, the court relied upon Douglas v. California, 372 U.S. 353 (1963), and Griffin v. Illinois, 351 U.S. 12 (1956), which are decisions invalidating state laws that discriminated against criminal defendants because of their poverty.

tions is to introduce a capricious or irrelevant factor." Likewise *McDonald v. Bd. of Elections Comm'rs of Chicago,* 394 U.S. 802, 807 (1969), noted that "a careful examination on our part is especially warranted where lines are drawn on the basis of wealth . . . which would independently render a classification highly suspect and thereby demand a more exacting judicial scrutiny."

Further justification for the very demanding test which this Court applies to defendants' classifications is the very great significance of education to the individual. The crucial nature of education for the citizenry lies at the heart of almost twenty years of school desegregation litigation. The oft repeated declaration of *Brown v. Bd. of Education,* 347 U.S. 483, 493 (1954), continues to ring true:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Because of the grave significance of education both to the individual and to our society, the defendants

must demonstrate a compelling state interest that is promoted by the current classifications created under the financing scheme.

Defendants insist that the Court is bound by the opinions in *McInnis v. Shapiro,* 293 F. Supp 327 (N. D. Ill. 1968), aff'd mem. sub nom., 394 U.S. 322 (1969); and *Burrus v. Wilkerson,* 310 F. Supp. 572 (W.D. Va. 1969), aff'd mem. sub nom., 397 U.S. 44 (1970). However, we disagree.

The development of judicially manageable standards is imperative when reviewing the complexities of a state educational financing scheme. Plaintiffs in *McInnis* sought to require that educational expenditures in Illinois be made solely on the basis of the "pupils' educational needs." Defining and applying the nebulous concept "educational needs" would have involved the court in the type of endless research and evaluation for which the judiciary is ill-suited.[4] Accordingly, the court refused the claim that the equal protection clause of the Fourteenth Amendment demands such an unworkable standard. The subsequent affirmance, without opinion, by the Supreme Court would not, in our opinion, bar consideration of plaintiffs' claim that lines in Texas have been drawn on the basis of wealth. The same situation prevails with respect to *Burrus* where the Court, in referring to the "varying needs" of the students, found the circumstances "scarcely distinguishable" from *McInnis.*

In the instant case plaintiffs have not advocated that

---

[4]Difficulties in defining the term are discussed at note 4, 293 F. Supp. 329.

educational expenditures be equal for each child.[8] Rather, they have recommended the application of the principle of "fiscal neutrality." Briefly summarized, this standard requires that the quality of public education may not be a function of wealth, other than the wealth of the state as a whole. Unlike the measure offered in *McInnis,* this proposal does not involve the Court in the intricacies of affirmatively requiring that expenditures be made in a certain manner or amount. On the contrary, the state may adopt the financial scheme desired so long as the variations in wealth among the governmentally chosen units do not affect spending for the education of any child.

Considered against this principle of "fiscal neutrality," defendants arguments for the present system are rendered insubstantial. Not only are defendants unable to demonstrate compelling state interests for their classifications based upon wealth, they fail even to establish a reasonable basis for these classifications. They urge the advantages of the present system in granting decisionmaking power to individual districts, and in permitting local parents to determine how much they desire to spend on their children's schooling. However, they lose sight of the fact that the state has, in truth and in fact, limited the choice of financing by guaranteeing that "some districts will spend low (with high taxes) while others will spend high (with low taxes).'" Hence, the present system does not serve to

---

[8]Indeed, it is difficult to see how the defendants reach a contrary conclusion since even the McInnis plaintiffs did not request precisely equal expenditures per child.

[9]As the Court said in Van Dusartz v. Hatfield, supra, note 1: "By its own acts, the State has indicated that it is not primarily interested in local choice in school matters. In fact, rather than reposing in each school district the eco-

promote one of the very interests which defendants assert.

Indicative of the character of defendants' other arguments is the statement that plaintiffs are calling for "socialized education." Education like the postal service has been socialized, or publicly financed and operated almost from its origin. The *type* of socialized education, not the question of its existence, is the only matter currently in dispute. One final contention of the defendants however calls for further analysis. In essence, they argue that the state may discriminate as it desires so long as federal financing equalizes the differences. Initially, the Court notes that plaintiffs have successfully controverted the contention that federal funds do in fact compensate for state discrimination.[8] More importantly, defendants have not adequately explained why the acts of other governmental units should excuse them from the discriminatory consequences of state law. *Hobson v. Hansen, supra,* 269 F. Supp. at 496, countered defendants' view by finding that the federal aid to education statutes[9]

---

nomic power to fix its own level of per pupil expenditure, the State has so arranged the structure as to guarantee that some districts will spend low (with high taxes) while others will spend high (with low taxes). To promote such an erratic dispersal of privilege and burden on a theory of local control of spending would be quite impossible."

[8] Plaintiffs' Exhibit 8, Table X, indicates that while Edgewood receives the highest federal revenues per pupil of any district in San Antonio, $108, and Alamo Heights, the lowest, $36, the former still has the lowest combined local-state-federal revenues per pupil, $356, and the latter the highest, $594.

[9] The statutes involved were the Economic Opportunity Act, 42 U.S.C. §§ 2781-2791 (1964); the Elementary and Secondary Education Act, 20 U.S.C. §§ 241a-411 (1970 Supp.), and federally impacted areas aid, 20 U.S.C. §§ 236-244 (1964), *as amended,* (1970 Supp.).

> . . . are manifestly intended to provide extraordinary services at the slum schools, not merely to compensate for inequalities produced by local school boards in favor of their middle-income schools. Thus, they cannot be regarded as curing any inequalities for which the Board is otherwise responsible.

Since they were designed primarily to meet special needs in disadvantaged schools, these funds cannot be employed as a substitute for state aid without violating the Congressional will. Further support for this view is offered by a series of decisions prohibiting deductions from state aid for districts receiving "impacted areas" aid.[11] Performance of its constitutional obligations must be judged by the state's own behavior, not by the actions of the federal government.

While defendants are correct in their suggestion that this Court cannot act as a "super-legislature," the judiciary can always determine that an act of the legislature is violative of the Constitution. Having determined that the current system of financing public education in Texas discriminates on the basis of wealth

---

[11]These cases have held that the statute clearly provides that the aid is intended as special assistance to local educational agencies, and that to permit a reduction in state aid would violate the Congressional intent. Douglas Ind. School Dist. No. 3 v. Jorgenson, 293 F. Supp. 849 (D. S.D. 1968); Hergenreter v. Hayden, 295 F. Supp. 251 (D. Kan. 1968); Shepheard v. Godwin, 280 F. Supp. 869 (E.D. Va. 1968); Carlsbad Union School Dist. v. Rafferty, 300 F. Supp. 434 (S.D. Cal. 1969), *aff'd*, 429 F. 2d 337 (9th Cir. 1970), and Triplett v. Tiemann, 302 F. Supp. 1244 (D. Neb. 1969). After these action arose, the statute was amended to prohibit aid to schools in any state which has "taken into consideration payments under this subchapter in determining the eligibility of any local educational agency in that State for State aid . . ." 20 U.S.C. §§ 240 (d) (2) (1969).

by permitting citizens of affluent districts to provide a higher quality education for their children, while paying lower taxes, this Court concludes, as a matter of law, that the plaintiffs have been denied equal protection of the laws under the Fourteenth Amendment to the United States Constitution by the operation of Article 7, § 3 of the Texas Constitution and the sections of the Education Code relating to the financing of education, including the Minimum Foundation Program.

Now it is incumbent upon the defendants and the Texas Legislature to determine what new form of financing should be utilized to support public education." The selection may be made from a wide variety of financing plans so long as the program adopted does not make the quality of public education a function of wealth other than the wealth of the state as a whole.

"On October 15, 1969 this Court indicated its awareness of the fact that the Legislature of Texas, on its own initiative, had authorized the appointment of a committee to study the public school system of Texas and to recommend "a specific formula or formulae to establish a fair and equitable basis for the division of the financial responsibility between the State and the various school districts of Texas." It was then felt that ample time remained for the committee to "explore all facets and all possibilities in relation to the problem area," in order for appropriate legislation to be enacted not later than the adjournment of the 62nd Legislature, and since the Legislature appeared ready to grapple with the problems involved, the trial of this cause was held in abeyance pending further developments. Unfortunately, however, no action was taken during the 62nd Session which has adjourned. Hopefully, the Governor will see fit to submit this matter to one or more special sessions so that members of the Legislature can give these complex and complicated problems their undivided attention.

Accordingly, IT IS ORDERED that:

(1) The defendants and each of them be preliminarily and permanently restrained and enjoined from giving any force and effect to said Article 7, § 3 of the Texas Constitution, and the sections of the Texas Education Code relating to the financing of education, including the Minimum Foundation School Program Act (Ch. 16), and that defendants, the Commissioner of Education and the members of the State Board of Education, and each of them, be ordered to reallocate the funds available for financial support of the school system, including, without limitation, funds derived from taxation of real property by school districts, and to otherwise restructure the financial system in such a manner as not to violate the equal protection provisions of both the United States and Texas Constitutions;

(2) The mandate in this cause shall be stayed, and this Court shall retain jurisdiction in this action for a period of two years in order to afford the defendants and the Legislature an opportunity to take all steps reasonably feasible to make the school system comply with the applicable law; and without limiting the generality of the foregoing, to reallocate the school funds, and to otherwise restructure the taxing and financing system so that the educational opportunities afforded the children attending Edgewood Independent School District, and the other children of the State of Texas, are not made a function of wealth, other than the wealth of the State as a whole, as required by the equal protection clause of the Fourteenth Amendment to the United States Constitution. In the event the legislature fails to act within the time stated, the Court

is authorized to and will take further steps as may be necessary to implement both the purpose and the spirit of this order. See *Swann v. Adams,* 263 F. Supp. 225 (S.D. Fla. 1967); *Klahr v. Goddard,* 254 F. Supp. 997 (D. Ariz. 1966). Needless to say, the Court hopes that this latter action will be unnecessary.

Dated December 23, 1971.

IRVING L. GOLDBERG
United States Circuit Judge

ADRIAN A. SPEARS
Chief United States District Judge

JACK ROBERTS
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CIVIL ACTION NO. 68-175-SA

DEMETRIO P. RODRIGUEZ, ET AL.,
v.
SAN ANTONIO INDEPENDENT SCHOOL DISTRICT, ET AL.,

Before GOLDBERG, Circuit Judge; SPEARS, Chief District Judge; and ROBERTS, District Judge.

CLARIFICATION OF ORIGINAL OPINION

PER CURIAM:

Having fully considered defendants' motion for clarification of judgment and the plaintiffs' response thereto, as well as the amicus curiae briefs submitted, the Court is of the opinion that the requests in said motion constituting nothing more than "clarifications" are already implicit in the full context of the language contained in our original opinion; nevertheless, in an attempt to dispell all possible doubt as to what was intended, prevent disruptions in the operation of the public school system in Texas, and avoid further delay on the final disposition of this litigation, it is ORDERED that paragraphs (1) and (2) on pages 8 and 9 of the opinion of this Court entered on December 23, 1971, be and they are hereby amended to read as follows:

(1) The defendants and each of them be preliminarily and permanently restrained and enjoined

from giving any force and effect to the operation of said Article 7, § 3 of the Texas Constitution, and the sections of the Texas Education Code relating to the financing of education, including the Minimum Foundation School Program Act, insofar as they discriminate against plaintiffs and others on the basis of wealth other than the wealth of the State as a whole, and that defendants, the Commissioner of Education and the members of the State Board of Education, and each of them, be ordered to reallocate the funds available for financial support of the school system, including, without limitation, funds derived from taxation of real property by school districts, and to otherwise restructure the financial system in such a manner as not to violate the equal protection provisions of both the United States and Texas Constitutions;

(2) The mandate in this cause shall be stayed for a period of two years in order to afford the defendants and the Legislature an opportunity to take all steps reasonably feasible to make the school system comply with the applicable law; and without limiting the generality of the foregoing, to reallocate the school funds, and to otherwise restructure the taxing and financing system so that the educational opportunities afforded the children attending Edgewood Independent School District, and the other children of the State of Texas, are not made a function of wealth other than the wealth of the State as a whole, as required by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Our holding that the plaintiffs have been denied

equal protection of the laws under the Fourteenth Amendment to the United States Constitution by the operation of Articles 7, § 3 of the Texas Constitution, and the sections of the Texas Education Code relating to the financing of education, including the Minimum Foundation Program, shall have prospective application only, and shall not become effective until after the expiration of two years from December 23, 1971. This order shall in no way affect the validity, incontestibility, obligation to pay, source of payment or enforceability of any presently outstanding bond, note or other security issued, or contractual obligation incurred by a school district in Texas for public school purposes, nor the validity or enforceability of any tax or other source of payment of any such bond, note, security or obligation; nor shall this judgment in any way affect the validity, incontestibility, obligation of payment, source of payment or enforceability of any bond, note or other security to be issued and delivered, or contractual obligation incurred by Texas school districts, for authorized purposes, during the period of two years from December 23, 1971, nor shall the validity or enforceability of any tax or other source of payment for any such bond, note or other security issued and delivered, or any contractual obligation incurred during such two year period be affected hereby; it being the intention of this Court that this judgment should be construed in such a way as to permit an orderly transition during said two year period from an unconstitutional to a constitutional system of school financing. The Court retains jurisdiction of this action to take such further steps as

may be necessary to implement both the purpose and spirit of this order, in the event the Legislature fails to act within the time stated, but, as we understand the law, this constitutes no impediment with respect to the finality of this judgment for the purpose of appeal, and none is intended. See *Swann v. Adams*, 385 U.S. 440 (1967, 263 F. Supp. 225 (S.D. Fla. 1967); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Gunn v. Committee to End the War in Vietnam*, 399 U.S. 383 (1970); and *Klahr v. Goddard*, 254 F. Supp. 997 (D. Ariz. 1966). Needless to say, we hope that no further action by this Court will be necessary.

Dated January 26, 1972.

ADRIAN A. SPEARS,
Chief United States District Judge, acting for and on behalf of all three judges designated to hear and determine this cause, with full authority from each such judge to so act.